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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1646

PETER C. ANDRESEN,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF AND APPENDIX OF RESPONDENT

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STATE OF MARYLAND,

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ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF RESPONDENT

PRELIMINARY COMMENT

In accordance with Section 3 of Supreme Court Rule 40, the Respondent adopts from the Brief of the Petitioner the Opinions Below, Jurisdictional Statement, Constitutional Provisions and Statutes Involved and, in substance, Questions Presented for Review.

STATEMENT OF THE CASE

Although Section 3 of Supreme Court Rule 40 relates that no statement of the case need ordinarily be made by the Respondent, the Respondent deems the making of this statement of the case to be necessary because of

the manner in which the statement of the case is presented by the Petitioner.

Certiorari to the Court of Special Appeals of Maryland was granted to Petitioner, Peter C. Andresen, an attorney at law,[1] specializing in the handling of real estate settlements in Montgomery County, Maryland (A. 1). He was convicted of three counts of fraudulent misappropriation by a fiduciary and of five counts of false pretenses in the Circuit Court of Montgomery County, Maryland. Petitioner received eight concurrent two-year sentences (A. 2). Four counts of false pretenses against the Title Insurance Company of Minnesota were reversed (A. 22). The count of false pretense against Standard-Young Associates was affirmed (A. 26-27), as were the three counts of fraudulent misappropriation of funds against Pollitt, Warfield and Holtzelow, respectively (A. 18).

Armed with separate search and seizure warrants, the law office of Petitioner at 3700 Decatur Avenue and the office of Mt. Vernon Development Corporation[2] at 3514 Plyers Mill Road (A. 28) were simultaneously entered on October 30, 1972 (A. 37) by two separate search parties. The search conducted at 3700 Decatur Avenue was under the supervision of Special Investigator Joseph Lawrence, of the major frauds unit of the State's Attorney's Office for Montgomery County (A. 184). Deborah Nalls, who was employed by the Bi-County Major Frauds Unit (A. 184), also participated in the search of 3700 Decatur Avenue (A. 184-185). This

[1] Petitioner was suspended from the active practice of law on June 9, 1975 by the Maryland Court of Appeals.

[2] Petitioner was an incorporator, the resident agent agent and a director of Mount Vernon Development Corporation. Petitioner also appeared to own all of the stock of Mount Vernon (A. 100-101).

search took place between 10:30 a.m. and 3:00 p.m. (A. 185), with some of the initial period of time expended in waiting for Petitioner's counsel to arrive (A. 185). Approximately 2 to 3% of the files in that office were seized (A. 185-186). At the hearing on the Motion to Suppress, Mrs. Nalls reviewed the records seized and the reasons for the seizure of said records (R. 177-183).[3]

Austin I. Moyer, a Special Investigator for the Prince George's County State's Attorney's Office (A. 179) executed the search and seizure warrant for 3514 Plyers Mill Road (A. 179-180). There was no forced entry (A. 181), and Officer Costello appears to have been the only other person who accompanied S. I. Moyer (A. 180). This search took place for approximately four hours (A. 182), and less than 5% of the files at 3514 Plyers Mill Road were actually seized (A. 182). All of the files seized related to Lot 13T specifically or to the Potomac Woods subdivision generally (A. 182).

After a hearing on Petitioner's Motion to Suppress the evidence (A. 129), which hearing took two days, the trial court granted Petitioner's Motion to Suppress all items seized, with the exception of (1) exhibit numbers 10 to 14, inclusive, with relation to the seizure at 3514 Plyers Mill Road and (2) exhibit numbers 15 to 21 inclusive, 23, 24 and 28 to 34 inclusive, as they related to 3700 Decatur Avenue (A. 139).[4]

[3] All record references are to proceedings on the Motion to Suppress unless designated "RII" followed by a page number. In the latter instance ("RII"), the reference is to the trial of Petitioner on the merits.

[4] For a concise reference to a description of each exhibit not suppressed, as that exhibit relates to the numbered items set forth on the two returns, see Appendix entitled "Table of Exhibits" (A. 187).

This Court has granted Petitioner's Writ of Certiorari to the Court of Special Appeals of Maryland to determine whether the searches conducted violated Petitioner's (1) Fifth Amendment rights against self incrimination and his (2) Fourth Amendment right against an unreasonable search and seizure.

SUMMARY OF ARGUMENT

I.

Petitioner, an attorney-at-law, who is a sole practitioner, possesses no constitutional basis to invoke the privilege against self-incrimination under Amendment V to the Constitution of the United States, to prevent the introduction at his criminal trial of his personal handwritten notes and memoranda, books and records, which were seized from his desk and files in his personal office, under a search warrant held to be otherwise reasonable. The Respondent relies in the main upon *United States v. Blank,* 459 F.2d 383 (6th Cir., 1972) *cert. den.* 409 U.S. 887, 93 S. Ct. 111, 34 L. Ed. 2d 143 (1972), to the effect that evidence of crime lawfully seized within the constitutional framework under Amendment IV to the Constitution of the United States, is admissible in evidence without regard to a claim of privilege against self-incrimination under Amendment V to the Constitution of the United States. While *Boyd v. United States,* 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed 746 (1886), may still be viable to establish that a person may not be compelled to produce incriminating records and documents of a testimonial nature (subject only to the required business records exception), that case does not bar the introduction into evidence of documents and records seized pursuant to a judicially issued warrant, based upon probable cause, which particularly describes the place to be searched

and the things to be seized. In addition, the Respondent contends that the items so seized in the instant case were business records kept by Petitioner in his profession as an attorney-at-law, thereby negating Petitioner's argument that the records seized were private and personal only to himself.

II.

The question of whether the search of petitioner's offices was violative of Amendment IV to the Constitution of the United States was accepted for decision by the Court. Petitioner has raised five direct challenges to the search of his office:

A. Although the record does not indicate a direct offering of the search warrants into evidence, the record will ultimately show beyond any doubt that the warrants and/or the contents of the warrants were in evidence.

B. The warrants were definitely not "general" warrants under the facts of the instant case, when viewing the language of the warrants in their entirety and considering the minimal amount of evidence actually (1) seized and (2) ultimately introduced into evidence.

C. There was sufficient "fresh" probable cause from which the trial judge who issued the warrants could have found that a crime was being committed on the premises described.

D. The search party validly and legally seized records under the Plain View Doctrine, which records were admitted into evidence to negate mistake and to show a plan or scheme by which the Petitioner was tried and convicted of false pretenses and fraudulent misappropriation.

E. Because the informants in the application and affidavit were specifically named, it was not necessary to prove the credibility-reliability

and trustworthiness of said informants in accordance with the dictates of *Aguilar v. Texas,* 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1974), as it relates to unnamed police informants.

ARGUMENT

I.

THE INTRODUCTION INTO EVIDENCE OF THE HANDWRITTEN NOTES AND MEMORANDA, BOOKS AND RECORDS OF AN ATTORNEY AT LAW WHICH WERE SEIZED FROM THE DESK AND FILES OF THE OFFICE OF THE ATTORNEY UNDER A SEARCH WARRANT HELD TO BE OTHERWISE REASONABLE, DOES NOT OFFEND THE PRIVILEGE AGAINST SELF-INCRIMINATION UNDER AMENDMENT V TO THE CONSTITUTION OF THE UNITED STATES UNDER THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE.

The thrust of Petitioner's argument is directed at the alleged inconsistency between the decisions in *Hill v. Philpott,* 445 F.2d 144 (7th Cir.,1971), *cert. den.* 404 U.S. 991 (1971) and *United States v. Blank,* 459 F.2d 383 (6th Cir., 1972), *cert. den.* 409 U.S. 887, 93 S. Ct. 111, 34 L. Ed. 2d 143 (1972). In *Hill,* the Seventh Circuit held in a two-to-one decision that the introduction into evidence of a taxpayer's *personal* books and records should properly be refused on the basis of a Fifth Amendment privilege against self-incrimination, even though the same had been seized pursuant to a valid search warrant. The rationale of the majority in *Hill* was grounded upon the legal premise that the taxpayer would have been afforded his Fifth Amendment right against self-incrimination had the Government sought by subpoena or summons the same personal books and records of the taxpayer.[5]

[5] The dissent in *Hill* held that the papers sought were not so intimately confidential as to enjoy a superlative privacy which would be protected from seizure upon an adequately

In *Blank,* decided nearly one year thereafter, the Sixth Circuit held that worksheets of a sports and horse-book betting business which were seized under an admittedly valid search warrant would not be suppressed on Fifth Amendment grounds because they were not personal communications but were business accounts; that since they were not privately recorded and privately held thoughts or descriptions of events, these business records of which other persons would have knowledge were admissible in evidence if the same were obtained through a valid search warrant. The Sixth Circuit rejected the rationale of the majority decision in *Hill* that there is no distinction between records sought by subpoena and records sought by a search warrant. The rationale of the Court in *Blank* was set forth at 450 F.2d at p. 385:

> "We believe that there is a valid and important distinction between records sought by subpoena and records sought by search warrant. The subpoena *compels* the person receiving it by his own response to identify the documents delivered as the ones described in the subpoena. The search warrant involves no such element of compulsion upon an actual or potential defendant." (Emphasis added)

As succinctly espoused in the conclusion by the Court of Special Appeals of Maryland in this case (Moylan, J.): "The State here did all of the investigative work; the appellant was not *compelled* to do anything." (A. 54).

A Sixth Circuit case, *United States v. Beck,* 511 F.2d 997 (6th Cir., 1975) appears to be one of the most re-

grounded warrant. In describing the character of the papers, Judge Fairchild reasoned that the records in question were "maintained for business and professional purposes, with the knowledge and assistance of employees, and the manner in which they were alleged kept and used, made them, in a sense, instrumentalies of the tax evasion offense claimed." *Hill v. Philpott, Id.,* at page 150.

cently reported Circuit Court of Appeals case pertaining to the issue at bar. In reaffirming its position in *Blank*, the Court stated at pages 1002-1003:

> "Admitting properly seized 'personal papers' cannot violate the Fifth Amendment privilege against self-incrimination. Unlike an order which 'compels' production of evidence, *Boyd, supra,* 116 U.S. at 618, 6 S. Ct. 524, 29 L. Ed. 746 the owner of a notebook uncovered in a search in his absence is under no compulsion. See United States v. Blank, 459 F.2d 383, 385 (6th Cir. 1972), rev'g 330 F. Supp. 783 (N.D. Ohio 1971); United States v. Murray, 492 F.2d 178, 191 (9th Cir. 1973); United States v. Scharfman, 448 F.2d 1352, 1355 (2d Cir. 1971), cert. denied, 405 U.S. 919, 92 S. Ct. 944, 30 L. Ed. 2d 789 (1972). But see Hill v. Philpott, 445 F.2d 144 (7th Cir. 1971). Being unaware of the search, he has no choice. Comment, The Search and Seizure of Private Papers: Fourth and Fifth Amendment Considerations 6 Loyola (Cal.) L. Rev. 274, 290 n. 93 (1973). Couch v. United States, 409 U.S. 322, 327-336, 93 S. Ct. 611, 34 L. Ed. 2d 548 (1973), established that mandated cooperation, rather than the 'privacy' of the owned papers, is the *sine qua non* of the privilege against self-incrimination. See Comment, The Protection of Privacy by the Privilege Against Self-Incrimination: a Doctrine Laid to Rest?, 59 Iowa L. Rev. 1336 (1974). Similarly, though 'testimonial' evidence was seized in United States v. White, 401 U.S. 745, 91 S. Ct. 1122, 28 L. Ed. 2d 453 (1971), the Court sustained the admission of such uncompelled evidence without feeling even the need to discuss the privilege against self-incrimination.
>
> "Though the overall search and seizure is proper and though there is no compelled cooperation, the search and seizure of the papers must also be 'reasonable.' As the Second Circuit so aptly said,
>
> > 'The reason why we shrink from allowing a personal diary to be the object of a search is that the entire diary must be read to discover whether there are incriminating entries; most of us would feel rather differently with respect to a 'diary' whose cover page bore the title 'Robberies I Have Performed.' Similarly the abhorrence generally felt with respect to 'rummaging' through the contents of a desk to find an incriminating letter would not exist in the same measure if the letter were lying in plain view.' United States v. Bennett, 409 F.2d 888, 897 (2d Cir.), cert. denied sub. nom., Haywood v. United States, 396 U.S. 852, 90 S. Ct. 113, 24 L. Ed. 2d 101 (1969), Thomas v. United States, 402 U.S. 984, 91 S. Ct. 1670, 29 L. Ed. 2d 149 (1971).

The 'search' of the spiral notebook for its communicative value and for fingerprints, see United States v. Hill, 454 F.2d 282 (9th Cir. 1972), under the present circumstances, was hardly unreasonable in that, as in *Bennett,* there was no extensive 'rummaging.' Though appellate counsel has characterized the notebook as appellant's 'private diary' (Appellant's Reply Brief at 22), the 'diary' consisted of just one page, the first page, in fact, of the notebook. United States v. Gargotto, 510 F.2d 409 (6th Cir. 1974), sustained the reasonableness of a search involving much greater 'rummaging.' Cf. *Philpott, supra* (more than thirty cartons of records seized); United States v. Zive, 299 F. Supp. 1273 (S.D.N.Y. 1973) (at least seven desk or file drawers.)"[6]

A review of the pertinent cases cited by the Sixth Circuit in Beck reveals that the Second Circuit and Ninth Circuit[7] also have adhered to the proposition set

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[6] Testimony in the instant case revealed a seizure of less than 5% of Petitioner's files.

[7] The Eighth Circuit and the Tenth Circuit have apparently joined the growing list of Courts which have followed the lead of the Sixth Circuit decision in *United States v.*

forth in *Blank, i.e.,* business records seized by virtue of a warrant reasonable under Fourth Amendment requirements may be introduced into evidence over a Fifth Amendment objection. In *United States v. Scharfman,* 448 F.2d 1352 (2nd Cir., 1971), *cert. den.* 405 U.S. 919, 92 S. Ct. 944, 30 L. Ed. 2d 789 (1972), there was a search and seizure warrant issued for the recovery of furs from a highjacked fur shipment. During the course of the seizure of the furs, index cards and a consignment memorandum book were seized. In disposing of this point, the Second Circuit stated at page 1355:

> "Scharfman also argues that the memo book, containing entries written in his own hand, should have been suppressed because the fifth amendment would permit him to refuse to produce such evidence if he had possession. His analogy is inapposite. We held in United States v. Bennett, 409 F.2d 888, 896, cert. denied, sub nom. Jessup v. United States, 396 U.S. 852, 90 S. Ct. 376, 24 L. Ed. 2d 256, reh. denied, sub nom. Haywood v. United States, 396 U.S. 949, 90 S. Ct. 376, 24 L. Ed. 2d 256 (1969), that 'the Fourth Amendment does not protect broadly against the seizure whose compulsory production would be forbidden by the Fifth.'"

The Ninth Circuit, in *United States v. Murray,* 492 F.2d 178, 191 (9th Cir. 1973) commented:

> "3. *Seizure of address book.* Murray argues that the seizure and use in evidence of his address book and entries therein violated his Fifth Amendment privilege against self-incrimination. Murray relies

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Blank, supra. See *Shaffer v. Wilson,* 523 F.2d 175 (10th Cir. 1975) *infra.* A Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit has been filed in this Honorable Court, entitled *Shaffer v. Wilson,* No. 75-601. See also *Taylor v. State of Minnesota,* 466 F.2d 1119 (8th Cir. 1972), *Cert. den.* 410 U.S. 956, 93 S. Ct 1425, 35 L. Ed. 2d 689 (1973).

primarily upon an observation by Justice Bradley in Boyd v. United States, 116 U.S. 616, 633, 6 S. Ct. 524, 29 L. Ed. 746 (1886), to the effect that the seizure of a person's private books and papers to be used in evidence against him is not substantially different from compelling him to be a witness against himself.

Boyd involved a self-incrimination problem because the defendant was required by court order to produce a self-incriminating invoice. No such circumstance is present here. Actually, Murray's address book could have been seized as an instrumentality of the crime under the law as it existed prior to Warden v. Hayden, 387 U.S. 294, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967), which overturned the 'mere evidence' rule. *Hayden,* of course, liberalized the rule as to what items may be seized.

In *Hayden,* however, the court reserved the question of whether, in a search and seizure otherwise valid, the authorities could, in view of the privilege against self-incrimination, take items which are 'testimonial' or 'communicative' in nature. *See Hayden,* at 302-303, 87 S. Ct. 1642. But in United States v. Bennett, 409 F.2d 888, 896 (2d Cir. 1969), the Second Circuit held that such items can be taken during a lawful search and seizure and are admissible. We agree."

Recently, the Tenth Circuit had cause to review the very issues raised by the Petitioner in the case at bar. In *Shaffer v. Wilson,* 523 F.2d 175 (10th Cir. 1975), the financial records of Shaffer pertaining to his dental practice were seized incident to an otherwise valid search and seizure warrant. The search warrant authorized a search and seizure of financial and patient records, books and accounts, as well as "diverse other records of financial transactions." In discussing the

search and seizure, the facts were described, in the dissent:[8]

> "The warrant was executed by some six or eight agents appearing at the dental office of appellant, Wendell L. Shaffer, where he practiced by himself, at or shortly before he opened it for the day. This group of agents remained there for about seven hours going through all the records in the office, emptying the file cabinets, desk drawers, and closets. The papers seized were placed by the agents in some eighteen boxes and hauled away." At p. 180.

With the above factual background, Shaffer contended that (1) the seizure of his private papers as a dentist practicing as a sole practitioner violated his privilege against self-incrimination and (2) the search and seizure itself was unreasonable under the Fourth Amendment. The Tenth Circuit distinguished *Hill* by citing the fact that the Seventh Circuit "did not, however, distinguish between the 'compulsion' aspect presented via a subpoena or summons, if such there be, and lack of same under a search warrant." 523 F.2d, 177. *Vonder Ahe v. Howland*, 508 F.2d 364 (9th Cir., 1975) was also distinguished when the Tenth Circuit held that *Vonder Ahe* involved a general search warrant for the indiscriminate seizure of all the books and records, including personal and private papers, of Vonder Ahe. After reviewing all of the other cases on point which had previously been decided, the Tenth Circuit held at page 179 of 523 F.2d:

> "We accordingly hold that under the facts reflected in the record of this case, and in view of the substantial supportive legal authority, that the seizure of the records herein, pursuant to a valid search warrant, was not violative of Shaffers' Fifth Amendment privilege against self-incrimination. The materials seized were business records of which other persons must have knowledge. United States v. Blank, *supra*."

[8] The Tenth Circuit by a 2 to 1 decision affirmed the United States District Court.

In *Taylor v. State of Minnesota*, 466 F.2d 1119 (8th Cir., 1972), *cert. den.* 410 U.S. 956, 93 S. Ct. 1425, 35 L. Ed. 2d 689 (1973), Taylor also claimed that the seizure of an incriminating memorandum instructing Taylor's wife on how to prepare and condition a young woman for service as a prostitute in Taylor's stable of prostitutes, was violative of Taylor's Fifth Amendment rights. The Eighth Circuit held the memorandum to be admissible because it was not the product of any coercion.[9]

In addition to all of the above, this Court in *Couch v. United States*, 409 U.S. 322, 93 S. Ct. 611, 34 L. Ed. 548 (1973) also appears to hold that there is a distinction between an order to produce records and the seizure of records under the authority of a warrant. In footnote 10, this Court also appeared to make the further distinction between *personal* papers and other papers in the handwriting of the accused, stating:

> "A later Court commenting on the *Boyd* privilege noted that 'the papers and effects which the privilege protects must be the *private property* of the person claiming the privilege, or at least in his possession in a purely *personal capacity*.' United States v. White, 322 U.S. 694, 699, 64 S. Ct. 1248, 1251, 88 L. Ed. 1542 (1944)." (Emphasis in the original)

[9] With reference to Petitioner's argument relating to his Fourth Amendment rights, *infra.*, the Eighth Circuit in *Taylor* also held that the search in question was sufficiently specific so as not to amount to a general search, even though the memorandum in question was not specifically listed within the search and seizure warrant as an item to be seized.

It is for this reason that the Petitioner's reliance on *Hill*, as well as Petitioner's contention itself, is without merit. The papers seized in the instant case were not *personal* within the contemplation of the various cases. Rather, the papers seized were no more than records kept in the ordinary course of Petitioner's practice of law and reflected such items as deeds, mortgages, deeds of trust, memoranda of settlements, and the like. These were papers which were prepared as a necessity for clients, rather than papers of a purely personal nature which referred only to the private property of the Petitioner. To further illustrate that many of the items seized were not of a personal nature to Petitioner, it should be noted that the Pollitt real estate settlement was conducted by a Mr. Paxton from Petitioner's office (R. II 81), as was the real estate settlement of Mr. Warfield (R. II 108).

At first blush, it might appear as though the respective holding of the Seventh Circuit in *Hill* is inconsistent with the holdings of the Sixth Circuit in *Blank*, the Second Circuit in *Scharfman* and the Ninth Circuit in *Murray*. However, this Court appears to have already held that items lawfully seized as an incident to a valid arrest are admissible in evidence over a Fifth Amendment objection in a situation wherein the personal papers were so closely related to the business that the papers were determined to be business records. In *Marron v. United States*, 275 U.S. 192, 48 S. Ct. 74, 72 L. Ed. 231 (1927), Marron claimed that a ledger and certain bills for gas, electric light, water and telephone services, which were obtained through an illegal search and seizure, should have been excluded because of a violation of his Fourth and Fifth Amendment rights. After holding that the items in question were not admissible pursuant to the search warrant because the

same were not particularly described as things to be seized (intoxicating liquors and articles for their manufacture were described in the warrant), this Court allowed the items to be introduced in evidence for the following reason:

> "The bills for gas, electric light, or, and telephone services disclosed items of expense; they were convenient, if not in fact necessary, for the keeping of the accounts; and, as they were so closely related to the business, it is not unreasonable to consider them as used to carry it on. It follows that the ledger and bills were lawfully seized as an incident of the arrest." 48 S. Ct. at 77; 275 U.S. at 199.

It is, therefore, evident that this Court has already ruled that the Fifth Amendment privilege against self-incrimination will not attach in situations where evidence is otherwise legally obtained. While it may be true that the evidence in *Marron* was admissible by virtue of a valid arrest, the Respondent would submit that the seizure of such items pursuant to a search warrant would be admissible in evidence by analogy. The records in *Marron* were allowed in evidence as closely related to the business of Marron. In similar fashion, the records seized from the Petitioner were actually used in carrying on the Petitioner's profession as an attorney at law. Furthermore, the seized records were not personal by any stretch of the imagination, and even though some of the papers may have been in Petitioner's handwriting, the seized records were nothing more than business records kept in the ordinary course of Petitioner's profession as an attorney at law.

In a somewhat related case involving Petitioner's records, the Court of Appeals of Maryland (Murphy, C.J.) held that Petitioner was required to produce his

records for a Court-ordered audit upon its finding that such records were required to be kept in Petitioner's business (real estate settlement records). *Andresen v. Bar Association of Montgomery County,* 269 Md. 313 305 A.2d 845 (1973).

Petitioner's reliance upon *Bellis v. Unted States,* 417 U.S. 85, 94 S. Ct. 2179, ___ L. Ed. 2d. ___ (1974) is totally unfounded. Unlike the facts in the instant case where a warrant issued, Bellis was subjected to a *subpoena* for certain partnership records. The Respondent acknowledges the possible difference between a valid search and seizure warrant on the one hand and a subpoena on the other hand. In the former, an individual is not directly compelled to incriminate himself; in the latter, an individual would have to bring the records to the proper governmental authority and might thereby be incriminating himself.

The Respondent would take issue with the blunt statement of the Petitioner that this Court in *Bellis* "cited with unanimous approval" the holding in *Hill* (Br. 12). It must be noted that the citing of *Hill* in *Bellis* follows a reference to *Boyd.* This Court in *Bellis* at 94 S. Ct. 2182, referred to *Boyd* as holding that there is a Fifth Amendment privilege against *forcible and compulsory extortion* . . . of [a man's] *private papers* to be used as evidence to convict him of a crime . . .". Citing *Boyd* at 6 S. Ct. 630 (Emphasis added). Then, this Court appeared to relate that the prohibition against *forcible and compulsory extortion* of a man's *private papers* applied to the business records of a sole practitioner.

In the instant case, there was no *extortion,* forcibly and compulsory or otherwise, of the *private papers* of the Petitioner. Respondent would submit that the reference to *Hill* in the above context is a far cry from

Petitioner's contention that there was an unanimous statement in *Hill* that no business records of a sole practitioner are ever subject to a valid search and seizure warrant. This is especially true when considering that *Bellis,* like its predecessor *Boyd,* involved a *subpoena,* which if the items subpoenaed were incriminatory, would have amounted to legal process to force the accused individual to personally produce and authenticate evidence of a personal nature which might tend to incriminate himself. In the instant case, there was a seizure "under a *search warrant* held to be othewise reasonable." In the former situation, *i.e.,* a subpoena, the Fifth Amendment is directly brought to the fore. In the latter instance, *i.e,* a search warrant otherwise held to be reasonable, the Fourth Amendment is directly involved.

The Respondent would submit that the authors who framed both Amendments to the Constitution of the United States had every intention of giving to both the Fourth and Fifth Amendments an equal position in attempting to guarantee the rights of a person against *unreasonable* searches and seizures and against compelled self-incrimination, respectively. There does not appear to be any valid reason for granting preferential treatment to the Fifth Amendment in derogation of the Fourth Amendment. The rights of an individual surely must be guaranteed, but the rights of society also must be protected. To take Petitioner's theory to its ultimate conclusion would grant unto any sole proprietor or sole practitioner total exemption from a valid search warrant in all instances where some of the legally seized documents are in the actual handwriting of the person against whom the reasonable search and seizure is directed. This should not be the law of the land, and the Respondent respectfully submits that it is not the law of the land.

The Respondent would further adhere to the finding of the Court of Special Appeals of Maryland, when that Court held:

> ". . . Another part of *Boyd*, however — that relied upon by the appellant here — is a quaint anachronism of no current vitality. That is its so-called "mystic union of the Fourth and Fifth Amendments." That was a now outdated legal fiction by which justices and judges aggrieved at Fourth Amendment violations by the police could get around the absence of an exclusionary rule. By reading the Fourth Amendment violation as tantamount to compelled (and therefore forbidden) self-incrimination under the Fifth Amendment, exclusion was achieved. The notion was rendered obsolete in the federal courts by the adoption of an exclusionary rule as part of the Fourth Amendment in *Weeks v. United States, supra,* in 1914, and in the state courts by *Mapp v. Ohio,* 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, in 1961. The divorce between the Fourth Amendment and the Fifth Amendment is now universally recognized. *Gilbert v. California,* 388 U.S. 263, 87 S. Ct. 1951, 18 L. Ed. 2d 1178 (1967); *Schmerber v. California,* 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966). *Marron v. United States,* 275 U.S. 192, 48 S. Ct. 74, 72 L. Ed. 231 (1927) involved the legitimate seizure of incriminating business records." (A. 52-53).

In his Brief, Petitioner has set forth certain specific contentions which require point-by-point response. Petitioner alleges:

> ". . . that the State of Maryland does not contend, nor did the state courts take issue with the fact that the papers seized and admitted into evidence over objection in petitioner's case were personal papers of the type which would ordinarily be privileged and could not be used against him. Both the respondent and the state courts readily admit that, if the subject documents had been sought by subpoena, rather than seized, they would have been privileged. (A. 51, 142). They, however, each conclude that, because the search and seizure of the papers was held to be reasonable, the Fifth Amendment protections therefore do not apply because petitioner 'was not compelled to do anything'. (A. 51-4)" (Dif. 13)

A reading of the references cited by Petitioner does not reveal any such admission. At best, Petitioner arguably may contend that there may have been an inference that the documents in evidence were personal papers. It does not appear as though the trial court or the Maryland appellate court specifically held the papers to be personal and privileged. Both the opinion of the trial court (A. 142) and the opinion of the Court of Special Appeals (A. 51-54) found that the papers reasonably seized from Petitioner were admissible in evidence. However, neither court held, as Petitioner would lead this Court to believe, that there was a concession that the seized documents were personal and privileged. To the contrary, the trial court merely reaffirmed that any purely personal papers sought through a subpoena *duces tecum,* which an individual contended might tend to incriminate him, could be challenged as having been obtained in violation of the Fifth Amendment (A. 142). The Court of Special Appeals, of Maryland in holding to the same legal premise, stated:

> "The State's position, on the other hand, is that it proceeded exclusively on a Fourth Amendment basis, whereunder probable cause will justify a court's warrant to search for and to seize incriminating evidence, and not upon a Fifth Amendment basis, whereunder a suspect is required by subpoena to present for examination his records which *may* be incriminating." (A. 51) (Emphasis in original).

Because the State took the position that the documents were admissible in evidence by virtue of the Fourth Amendment, it was not necessary for the courts to even reach the issue of whether the fruits of the reasonable search were private and personal to the Petitioner, or alternatively were records kept in the course of Petitioner's profession as an attorney at law. The acknowledgement that the records seized in the instant case may have been constitutionally protected upon a Fifth Amendment privilege, had the same been sought by virtue of a subpoena, does not equate with a concession that the records seized were private and personal to Petitioner.

Although Petitioner exclaims that this portion of the Respondent's argument relating to business records "comes too late" (Br. 13), a review of the record shows otherwise. In his original brief to the Court of Special Appeals, Petitioner acknowledged that the items seized were his "private files and notes and other papers involving transactions, legal cases and law suits *concerning his clients*, their wills and other private and secret communications protected by the *attorney-client privilege*" (Br. 57 of Petitioner's brief to the Court of Special Appeals). (Emphasis added). Therefore, by Petitioner's own admission, the items seized were business records pertaining to his clients to which he raised an alleged attorney-client privilege. In addition, this very point was well preserved at the time of trial when the State made specific reference to business records (A. 179-180)[10]

[10] Respondent has found it necessary to include an Appendix in addition to the ones filed by Petitioner. Respondent is cognizant of the Supreme Court Rules relative to a Single Appendix. However, Petitioner was to have the designated portions of the record to the Respondent by October 16, 1975. On November 6, 1975, the Petitioner wrote a letter to Respondent suggesting the inclusion of portions of several pages. Thereafter, Petitioner's Appendix was received.

For continuity, Respondent's Appendix is numbered consecutively to Appellee's Appendix, beginning with A. 179, and is found at the end of Respondent's Brief.

Reliance by Petitioner upon *Couch v. United States*, 409 U.S. 322, 93 S. Ct. 611, 34 L. Ed. 2d 548 (1973)[11] to support his contention is without merit (Br. 14). There is no quarrel with Petitioner's position that he retained possession and possibly even ownership of the records seized. But, this does not transpose business records into private and personal communicative writings. Nor does the fact that "[m]any, if not most, of the seized papers introduced, over objection . . . were shown to be in the personal handwriting of the petitioner" (Br. 15) allow for an additional transposition of business records into records of a private and personal nature.

Petitioner also mentions:

> "In petitioner's case, the "5% seized" amounted to literally thousands of papers which later filled several file cabinet drawers in the office of the States Attorney. (See Returns at A. 119, 122, which each folder contained approximately 50 to 100 and sometimes over 200 pages). Every wer (sic) drawer in petitioner's desk, and each and every adjoining desk, every file in every bookcase and credenza and each of over twenty file cabinet drawers were searched. Most important was the scope of the search wherein virtually *every one* of the thousands of papers present therein were scanned and most were examined with detail. The searchers, approximately eight in number, spent the better part of six hours conducting the search." (Br. 19).

[11] Petitioner also relies later upon the concurring opinion of Mr. Justice Brennan in *Couch* (Br. 16).

There is no documentary evidence in the Appendix to illustrate the "thousands of papers" presented, nor the number of papers in each folder, nor the fact that every desk drawer and every file cabinet drawer was searched. The total number of papers seized represented less than five per cent (5%) of all papers in Petitioner's office according to one witness (A. 183), and as few as two or three per cent (2-3%) according to another witness (A. 186). With this small percentage of items seized, all records which appeared on the return but did not pertain to the instant case were excluded by the trial court (A. 143-144). All files seized related to Potomac Woods (A. 182), and the search took approximately four (4) hours at the Plyers Mill Road office (A. 182). The search at Decatur Road was from 10:30 a.m. until 3:00 p.m., but part of the delay was occasioned by Petitioner's attempt to reach his attorney by telephone, and to have the search delayed until his attorney arrived (A. 185).[12]

The Petitioner quotes the following from *Hale v. Henkle*, 201 U.S. 43, 76, 26 S. Ct. 370, 379 (1906) (Br. 21):

> ". . . the substance of the offense is the compulsory production of private papers, whether under a search warrant or a *subpoena duces tecum* against which the person, . . . is entitled."

Notwithstanding that *Hale* involved a *subpoena duces tecum* and a Fourth Amendment breach, which are immediate differentiations from the instant case, a precise reading of *Hale* leads one only to the conclusion that the word "offense" relates to an unreasonable search and seizure. In this context, the Respondent would agree that evidence seized by an unreasonable search and seizure is to be suppressed, regardless of

[12] After some delay, the search began and Petitioner's attorney arrived thereafter (A. 185).

whether the compulsory production of *private* papers is objected to under a search warrant or a *subpoena duces tecum*.

Petitioner next cites *Weeks v. United States*, 232 U.S. 383, 397, 34 S. Ct. 341, 346 (1914), which Petitioner claims held:

> ". . . as was held in the Boyd Case, the substance of the offense is the compulsory production of private papers, whether under a search warrant or a subpoena duces tecum, against which the person, . . . is entitled to protection." (Br. 23).

A review of the above quote as cited in *Weeks* only reveals that the credit for the quote was given to *Hale v. Henkle, supra*. In addition, there was no search warrant in *Weeks*, whereas the search warrant in the instant case was held to be "otherwise reasonable."

Petitioner next argues that *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967), does not overrule *Gouled v. United States*, 255 U.S. 298, 41 S. Ct. 261, 65 L. Ed. 647 (1921) (Br. 23-24), because Warden involved clothing which was not testimonial or communicative in nature, but rather was mere evidence. This is exactly the reason why *Warden* overruled *Gouled*! Prior to *Warden, Gouled* had restricted lawful seizures to contraband, as well as fruits and instrumentalities of a crime. *Warden* held that "mere evidence" of a crime is admissible in evidence, provided it is lawfully obtained. In like context, although the records seized from the Petitioner may not have been the fruits or instrumentalities of a crime, *per se*, and therefore perhaps not admissible pre-*Warden*, the records seized were evidence of a crime and were admissible post-*Warden*.

Lastly, Petitioner claims that the admission of the evidence seized under the search warrant for false

pretenses, a misdemeanor, was prohibited by virtue of Article 35, Section 5(a) of the Annotated Code of Maryland (1971 Repl. Vol., as amended). Petitioner further contends that the "Court of Special Appeals refused to comment on [Article 35, Section 5 (a)]" (Br. 26). As in the case with Article 27, Section 551 of the Annotated Code of Maryland (1971 Repl. Vol.), upon which the Court of Special Appeals did comment, "[i]nadvertently (or advertently), the [Petitioner] did not read on . . ." (A. 37). Section 5(a) in its entirety set forth:

> "No evidence in the trial of misdemeanors shall be deemed admissible *where the same shall have been procured by, through, or in consequence of any illegal search or seizure or of any search and seizure prohibited* by the Declaration of Rights of this State; nor shall any evidence in such cases be admissible if procured by, through or in consequence of a search and seizure, the effect of the admission of which would be to compel one to give evidence against himself in a criminal case." (Emphasis Added).

Since the warrant in the instant case was determined to be otherwise reasonable, no additional comment was required before the Court of Special Appeals, nor at the present time in this brief.

For the foregoing reasons, the Respondent would submit firstly that the items seized under the otherwise valid search and seizure warrant were not purely personal to the Petitioner, and were therefore admissible into evidence. Secondly, unlike records requested through the issuance of a subpoena which might compel a person to give incriminating evidence against himself, items legally seized under the authority of a valid search and seizure warrant in accordance with the Fourth Amendment do not offend the Fifth

Amendment guarantee against compelled self-incrimination.

II.

THE SEARCH OF PETITIONER'S OFFICES WAS NOT VIOLATIVE OF AMENDMENT IV TO THE CONSTITUTION OF THE UNITED STATES.

(A) *Search Warrants Were Introduced Into Evidence.*

The Respondent does not take issue with the authority cited by the Petitioner that a search warrant under which the evidence was obtained must be introduced in evidence (Br. 26). The short answer to Petitioner's contention lies in the fact that the record in the instant case revealed that the search warrant was apparently introduced into evidence (A. 28-33).

In addition, even the quote set forth in Petitioner's brief from Cornelius, *The Law of Search and Seizure,* 185, stated that a conviction cannot be sustained if not established by the introduction of the warrant itself, *or by proof of its contents.* (Br. 26). Assuming *arguendo* that there was not a formal introduction of the warrants into evidence, the proof of the contents of the warrants was so exact as to cause the Court of Special Appeals to conclude that the warrants had been introduced into evidence (A. 28-33). Respondent adopts the facts as set forth by the Court of Special Appeals of Maryland in its opinion A. 28-33 to demonstrate the completeness of the proof of the contents of the warrants.

(B) *The Warrants in the Instant Case Did Not Amount to "General" Warrants.*

The Petitioner appears to acknowledge that the warrants in the instant case described with particular-

ity the items to be seized. However, Petitioner argues that the addition of the words "together with other fruits, instrumentalities and evidence of crime at this time unknown" would cause the particular warrants to become general warrants. In explaining the additional words, the Court of Special Appeals concluded:

> "A reading of the warrants *in full*, however, makes it apparent that the suspect phrase is tied explicitly to those items which might show a violation of the false pretenses law with respect to the sale of Lot 13T" (A. 34). (Emphasis added)

The Respondent adheres to the reasoning of the Court of Special Appeals of Maryland, especially in light of the fact that this Court has oft times held that an affidavit should be interpreted in a common-sense and not a hypothetical manner, and that the resolution of doubtful or marginal cases should be largely determined by the preference accorded to warrants. *United States v. Ventresca*, 380 U.S. 102, 85 S. Ct. 741, 13 L. Ed. 2d 684 (1965).

In arguing that the warrants in the instant case were general warrants, the Petitioner places primary reliance, on *Vonder Ahe v. Howland, supra*. Such reliance is unfounded. Pursuant to an audit, Vonder Ahe presented Internal Revenue Service agents with certain records. Subsequently, the agent discovered that the white cards which were presented to him represented the regular patients of Vonder Ahe, who was a dentist. The agent subsequently discovered that there was a separate set of yellow sheets and green cards for emergency patients, which were not included in the audit. The agents obtained warrants to seize all books and records, and the warrants were executed not only at the office of Vonder Ahe, but also at his home. The Court held that there was no probable cause shown for

the seizure of *all* of the doctor's dental books and records, or his personal and private papers. At page 369, the Court stated:

> "What is 'overly broad' cannot be resolved in an abstract or academic manner but only in relation to the facts, circumstances under, and the purpose for, which the warrants were issued. The warrants here were, in effect, general warrants. They sought all fiscal records of the doctor from January 1, 1966 to date [June 1970] . . . In short, except for the yellow sheets and green cards, this was the indentical material which had been delivered to and examined by Agent Holmes."

It can be seen that probable cause may have been lacking in *Vonder Ahe* where the agents "Proceeded . . . to ransack both office and home [of Vonder Ahe] and to asport practically every piece of paper they could lay their hands on" (at page 365). However, in the instant case, the testimony revealed that only between two and five per cent of Petitioner's papers were actually seized by the agents pursuant to the search warrants. Accordingly, the warrants in the instant case when considered in their entirety were not general warrants, and there was probable cause for the seizure of the relatively minute portion of Petitioner's records.

As pointed out in Footnote 16 in *Stanford v. State of Texas*, 379 U.S. 476, 85 S. Ct. 506, 13 L. Ed. 431 (1965) the "scrupulous exactitude" required to describe books to be seized when the basis for the seizure is the ideas contained therein does not apply necessarily full force where the books and records described are "no more than a ledger of unlawful enterprise". See *Marron v. United States, supra*. Without contravention Petitioner's books and records were purely and simply his ledger of unlawful enterprise.

(C) *It Was Not Impossible For the Trial Judge Who Issued the Warrants to Have Made The Finding That Probable Cause Was Demonstrated That A Crime Was Being Committed on the Premises.*

Petitioner contends that since one of the elements of the crime of false pretenses includes a false representation of a *past or existing fact,* it is impossible for the affidavit in the warrant to set forth that there is probable cause to believe that the laws relating to false pretenses were then being violated upon the premises. Petitioner believes that it is not possible for a crime to be *presently* being committed, when one of the elements of the crime itself is a false representation of a past or existing fact. However, the above allegations are merely a play on words. Section 551 of Article 27 of the Annotated Code of Maryland (1974 Cum. Supp.) provides that a search warrant may issue under a proper application and affidavit for any building wherein property subject to seizure under the criminal laws of the State is situated or located. It is apparent that the use of the phrase in the affidavit that the crime was presently being committed relates to the documents which were then on the premises. To hold otherwise, a warrant could never issue in a case of false pretenses because the facts represented would have already been acts of past history.

In addition to reliance upon *Ventresca* with relation to the preference to be afforded warrants, the Respondent also submits that *Warden v. Hayden, supra* is sufficient to dispell the argument of the Petitioner. Warden made it clear that any evidence of a past crime is subject to seizure under the Fourth Amendment.

As pointed out by the Court of Special Appeals (A. 37):

". . . He argues that the warrant applications of October 30, 1972, focus upon an alleged crime of false pretenses that was consummated and complete, by the very allegations in the warrant applications, on July 17, 1972. He reasons that on October 30, the crime was already an act of history and was not *still being committed.* Inadvertently (or advertently), the appellant did not read on in § 551, wherein the very next clause sets out the additional legitimate object of a search warrant: "or that any property subject to seizure under the criminal laws of the State is situated or located on the person of any such individual or in or on any such building, apartment, premises, place or thing." That any evidence of past crime — including "mere evidence" in contrast to contraband, fruits or instrumentalities — is seizable under the Fourth Amendment was made clear by *Warden v. Hayden, supra."*

In the same argument, Petitioner contends that the Judge who issued the search warrants did so on the basis of "stale" probable cause. The applications for the search warrants were dated October 30, 1972 (A. 97). A review of the two applications for the search warrants indicates that George Young and Audrey E. Young were last interviewed on October 25, 1972 (A. 97-98); that the State National Bank deed of trust was not released until October 3, 1972 (A. 104); that this release of October 3, 1972 was confirmed by the Senior Vice President of State National Bank on October 26, 1972 (A. 104); that there was not a release of a deed of trust to Madison National Bank as of October 27, 1972 (A. 104), and that all of the deeds of trust involved related to Lot 13T. Although there may have been extensive investigation over a period of several months, this was necessitated by the complex nature of the investigation, including the interviews with numerous individuals, the inquiry into certain corporate ventures of Petitioner,

and the need to complete sufficient title examinations to verify the information obtained from the various sources. As succinctly stated by the Court of Special Appeals of Maryland:

> "The ultimate criterion in determining the degree of evaporation of probable cause, however, is not case law but reason. . . . The massive records and files of the appellant-attorney and his protean corporate extensions in this case are more akin to the latter [tortise] than to the former [hare]. In terms of non-staleness, the probable cause here was still as the first dew of the morn" (A. 40).

(D) *The Principals and Prefaces Annunciated By This Court in Warden v. Hayden, were not Violated By The Court of Special Appeals in Upholding The Admission of Certain Items into Evidence Which Were Obtained By the Search and Seizure in Question.*

Petitioner takes issue with regard to several other items seized, which did not specifically relate to Lot 13T. In particular, the Petitioner refers to the opinion of the Court of Special Appeals:

> "Several other items seized, although not relating to Lot 13T specifically, showed a general pattern of operation on the part of the appellant with respect to unreleased deeds of trust on other properties in Potomac Woods and, therefore, negated any suggestion of mere mistake or lack of knowledge on his part when it came to his false representations as to Lot 13T. Because of their bearing on the critical question of the appellant's *mens rea,* we hold that they too were seizable evidence under the warrants. Alternatively, they were evidence of other crimes, their character as criminal evidence obvious to the searching party by the requisite standard of probable cause, and, therefore, seizable warrantlessly under the Plain View Doctrine." (A. 47-48).

Relying upon *Warden v. Hayden, supra,* the Petitioner contends that the papers seized "were not used by the prosecutor in an attempt to establish *mens rea* as to false pretenses." (Br. 34-35). The crime of false pretenses is committed when a person (1) by making a false representation of a past or existing fact (2) with intent to defraud, and (3) with knowledge of its falsity, (4) obtains any chattel, money or valuable security from another (5) who relies on the fase representation (6) to his detriment. *Polisher v. State,* 11 Md. App. 555, 276 A.2d 102 (1972). By the very definition and elements relating to false pretenses, it is incumbent upon the prosecutor to show that there was an intent to defraud, rather than a mistake on behalf of the accused. For this reason, it was permissible in the instant case for the other items seized to be introduced into evidence to show a general pattern of operation, rather than a mistake, on the part of the Petitioner with respect to unreleased deeds of trust on properties other than Lot 13T. This Court has also adhered to the same doctrine. In *Nye & Nissen, et al. v. United States,* 336 U.S. 613, 69 S. Ct. 766, 93 L. Ed. 919 (1949), a case involving the substantive crime of false pretenses, this Court cited with approval the introduction of evidence of crimes similar to those charged in order to prove the guilty intent of the accused. At page 618 of 336 U.S., this Court stated:

> "The evidence showed the presentation of eleven other false invoices. This was part of the evidence received in support of a conspiracy count. The trial court also admitted it at the conclusion of the case 'for the sole purpose of proving guilty intent, motive, or guilty knowledge' of the defendants. Evidence that similar and related offenses were committed in this period tended to show a consistent pattern of conduct highly relevant to the issue of intent."

After referring to the exhibits which passed constitutional muster because they related specifically to Lot 13T (A. 46-47), the Court of Special Appeals referred to the "other items seized" to show a general pattern of operation by the Petitioner with respect to unreleased deeds of trust on other properties in the Potomac Woods subdivision (A. 47-48). These exhibits were held to have been admissible in evidence because:

> "Alternatively, they were evidence of other crimes, their character as criminal evidence obvious to the searching party by the requisite standard of probable cause, and, therefore, seizable warrantlessly under the Plain View Doctrine." (A. 47-48).

The search party being on the premises lawfully by virtue of the search and seizure warrant, and looking for items pertaining to the unreleased deeds of trust on Lot 13T, apparently knew of other lots in the Potomac Woods subdivision wherein deeds of trust had not been released, even though settlement on those particular lots had previously taken place. Because these latter files and documents were in plain view of the searching party, the same were subjected to seizure and properly admissible into evidence.

(E) *The Two-Pronged Test of Credibility-Liability and Trustworthiness of the Non-Swearing Informants Was Satisfied.*

Relying upon *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1974), the Petitioner challenges the veracity of the informants set forth in the affidavit to the warrant. As aptly pointed out by the Court of Special Appeals in its opinion, *Aguilar* related to the rule set forth for the establishing of the credibility of unnamed police informers rather than disinterested civilian sources of information (A. 42-44). In the instant

case, secondary sources of information were all named and identified in the affidavit. These named individuals were either victims of the crime, disinterested civilian sources of information, or other law enforcement officers. For this reason, the Petitioner's contention is without merit.

In support of his final contention, the Petitioner argues that Hecht and Covert were not disinterested witnesses or victims of a crime, but were actually deeply embroiled in a civil controversy with the Petitioner (Br. 36). A review of the entire application and affidavit for the search warrants is sufficient to dispell the allegations made by the Petitioner. This is substantiated by the opinion of the Court of Special Appeals, wherein the Court held:

> "George and Audrey Young were the secretary and president, respectively, of the victimized company. Ira Burdette was the general superintendent for the appellant's construction business. John Sivers was a corporation president. Robert Freedman was general counsel and director of a savings and loan association. Frank Marsalek was executive vice president of a land title corporation. Charles Bieber worked for Mt. Vernon Development Corporation. June Stup was the appellant's secretary. Carl Zentz was the appellant's title searcher. Bruce Covert and Norman Hecht were vice presidents of banks. Deborah Nalls was a real estate law expert assigned to the Bi-County Fraud Unit. We are persuaded that none of the informants were anonymous police informers 'from the underworld milieu' but were rather either 'victims of crime, the disinterested witnesses of crime, other disinterested civilian sources of information or other law enforcement officers.' As we said in *Dawson v. State*, 11 Md. App. 694, 699, 276 A.2d 680:
>
> > 'The practical distinction is that in dealing with a named source, the very naming of the

> source and the relationship of the source to the observed information may go a long way (or even be sufficient unto itself), under the facts of a particular case, to establish the credibility of that source or the reliability of his information.'

And see Moylan, *Hearsay and Probable Cause: An Aguilar and Spinelli Primer*, 25 Mercer L. Rev. 741 (1974), pp. 765-773, 'The Problem of the Citizen-Informer.'" (A. 43-44).

Regardless of whether Hecht and Covert "were embroiled" in a pre-existing civil controversy with Petitioner (which is nowhere established in the Record) they were fully *identified* informants and qualified as disinterested witnesses or sources of information and qualified sources to produce in support of the application for a search and seizure warrant. Accordingly, Petitioner's contention that the reliability and trustworthiness of the non-swearing informants was not satisfied, is without merit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Special Appeals of Maryland should be affirmed.

Respectfully submitted,

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JON F. OSTER,
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For Respondent.

APPENDIX

(See Footnote 9 for Statement of Reasons for inclusion for an additional Appendix in the Brief of Respondent)

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS ON MOTIONS

AUSTIN A MOYER,

called by the defendant, having been duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Lamb:

[18] Q. Kindly state your full name. A. Austin A. Moyer.

Q. Where are you employed, sir? A. I am a special investigator for the Prince George's County State's Attorney's Office.

Q. And back in January of 1972 where were you employed, sir? A. The Bi-County Major Frauds Unit.

* * * * * *

CROSS EXAMINATION

By Mr. Werner:

[42] Q. Mr. Moyer, when this affidavit and the affidavit of, let's say the companion search warrant which is similar to it, [43] were prepared, did this take several days? A. Yes.

Q. And did you work with other persons in preparing it? A. Yes, I did.

Q. What other persons did you work with? A. Agent Lawrence, Debbie Nalls, yourself and the secretary.

Q. And you worked as a team, did you, or did you not? A. Oh yes.

Q. And afterward you read the affidavits thoroughly? A. Yes, I did.

Q. And at that time you understood them? A. Yes, I did.

Q. And did you have numerous documents from which you culled certain information which was included in the affidavit? A. Yes, I did.

Q. Were they voluminous documents? A. Yes, they were.

Q. And did you also have numerous interviews and reports of your own and other investigators? A. Yes, I did.

* * * * * *

[47] (Mr. Lamb) Your Honor, may I point out something. We might as well make the return on the warrant part of Defendant's Exhibit 1, the return on the warrant itself for Plyers Mill Road. That's only the warrant and the application.

(The Court) All right, put the return with it. You don't have the return?

(Mr. Lamb) No, Your Honor, I only have my copy of it.

(Mr. Werner) Here it is.

[48] (The Court) We're putting the return with Exhibit 10 — we're talking about — we're connecting the report and return with the affidavit and the search warrant as Defendant's Exhibit 1.

(Mr. Lamb) I want to be sure he's looking at—

(The Court) Introduce the other search warrant with the affidavit — that's 10.

(Mr. Werner) Nine.

* * * * * *

REDIRECT EXAMINATION

[64] Q. And when you went to that location to execute the warrant, was anybody physically present at that time? A. Yes, sir.

Q. Who was there? A. Officer Costello.

Q. He was with you when you executed the warrant? A. Yes.

Q. Was any layman citizen there at that time? A. We were allowed onto the premises after notifying a

gentleman who stated he was the manager of the building, and telling him that we had a search warrant for the premises, and in about an hour—

* * * * * *

[65] Q. Now, when you got inside, did somebody let you in the back door? A. Yes.

Q. And was that a person who said he worked at that location? A. There was a person who said he was manager of the building.

Q. Oh, you used a passkey, there was not— A. There was no forced entry, no, sir.

* * * * * *

[70] Q. Did they in fact tell you that Mr. Andresen kept some of his files over at Plyers Mill Road address? A. That there was a possibility that there could be some of his files at that address, yes.

Q. In addition to the Mount Vernon Development files? A. In addition to the Mount Vernon Development files.

Q. And when you looked through the files of Potomac Woods subdivision, you did not see anything in particular that had a direct bearing on Lot 13T and the false pretense you had investigated? A. I would say yes, I did.

Q. In all the files? A. In all the files.

Q. Were they settlement sheets? A. Whatever their title was, they depicted or they indicated persons involved in the transaction of 13T that I thought tended to relate to the search warrant.

[71] Q. But you had no understanding when you effected the search warrant that those particular files had any direct bearing on 13T, is that correct? A. I believed them to have direct reference to 13T as a result of association, names of people involved.

Q. So the only basis upon which you seized the file was that it actually was named Potomac Woods subdivision and a lot you were referring to in the affidavit was contained in Potomac Woods subdivi-

sion? A. I'm sorry, I misunderstood your question, or I didn't understand the question.

Q. The only basis upon which you seized the files of Potomac Woods A, B and General was because, Number 1, the file was designated "Potomac Woods" and number two, your entire investigation — well, not the entire investigation, I withdraw that — your investigation which resulted in the issuance of the search warrant had been directly related to Lot 13T which is a lot in Potomac Woods Subdivision? A. And other lots. The investigation covered other lots.

Q. But the affidavit in the search warrant didn't cover any other lots? A. Not the affidavit, no, sir.

Q. So you were seizing evidence that was — that you were interested in as a result of your prior investigation which was not contained in the search warrant at all? [72] A. I didn't know whether it was directly contained — whether it was that direct or not, but it did refer to it — that's what I believed at that time.

Q. So you seized everything and anything which had anything to do with any names and subdivision which you came across in your investigation of Mr. Andresen? A. No, sir, I left many things there.

Q. But anything relating to Potomac Woods you took? A. Anything relating to Potomac Woods I took, yes.

* * * * * *

RECROSS EXAMINATION

[75] Q. Was there anyone else there during the course of the search who otherwise identified themselves with the premises? A. No.

Q. How long did the search take? A. Approximately four hours.

Q. Okay, and can you describe the general physical condition of the premises at the time of your arrival and entry. A. There were, I believe, four desks, could have been five, in a row on the left-hand side; numerous files on the right-hand wall as you enter — box files. There were other files in the rear of the building and there

were items that were in front of them, I think there was a desk back there not being used; there were things piled on it.

Q. What was the condition of the premises with respect to its neatness and orderliness? A. It wasn't the neatest office I've ever been in.

Q. And during the course of your conduct did you have occasion to examine the files in connection with what you thought were the dictates of the search warrant? A. Yes.

Q. Did you look in the file cabinets, desk drawers and various other places in the premises? A. Yes.

Q. When you concluded your investigation, what was the [76] condition of the premises with respect to neatness and orderliness? A. Similar to as I had found it.

Q. Now, you have here displayed on a table from which you removed Defendant's Exhibits 2 through 8, other files contained in what might be described as cardboard boxes of the type and variety one might find in the supermarket, let's say, to hold small canned goods. Are these the other items you seized from that location? A. Yes, they are.

Q. So you got about two cardboard boxes of files? A. Yes.

Q. How does that compare with the total number of files and papers that were present on the premises that you searched?

* * * * * *

(Mr. Werner) What other papers, files and documents were on the premises in quantity, compared to those which you seized? A. I would say what appears on the table there represents no more than — less than five per cent of all that was in the office at that time.

* * * * * *

[126] DEBORAH NALLS,

a witness called by the State of Maryland, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Werner:

Q. Please identify yourself. A. My name is Deborah Nalls; I work for the Bi-County Major Frauds Unit.

* * * * * *

[144] JOSEPH LAWRENCE,

a witness for the State, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Lamb:

Q. State your full name, and your current occupation, for the record, please. A. My name is Joseph Lawrence, I am a special investigator for the State's Attorney's Office, Montgomery County, assigned to the Bi-County Major Frauds Unit which comes under the auspices of the State's Attorneys for Montgomery and Prince George's Counties.

* * * * * *

[145] Q. Did there come a time when you participated in the execution of a search warrant on the premises known as 3700 Decatur Avenue, Kensington, Maryland? A. Yes.

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[168] DEBORAH NALLS,

originally called by the State, was thereupon recalled by the State, and reminded that she was still under oath.

* * * * * *

REDIRECT EXAMINATION

By Mr. Werner:

Q. Directing your attention to on or about 30 or 31 October, 1972, did you have occasion to be part of a search party that was in the process of executing a

search warrant at 3700 Decatur Avenue, Kensington, the premises known as the law offices of Peter C. Andresen? A. Yes, I did.

Q. And were you in the presence of a Montgomery County police officer or officers? A. Yes, I was.

Q. Approximately what time in the day was this search [169] warrant executed? A. It was in the morning, approximately ten-thirty.

* * * * * *

(Mr. Werner) Mrs. Nalls, approximately what time did you conclude the search? [170] A. In the afternoon, I would say approximately three o'clock.

Q. So from ten-thirty to three o'clock; and was Mr. Joseph Lawrence in your presence as part of the search party? A. Yes, he was.

* * * * * *

[175] Q. Mr. Andresen was able to move freely about the office during the course of your search? A. Yes, he did.

Q. As a matter of fact, was Mr. Lamb, the defense attorney, there present? A. He wasn't there, I would say, for the first half of the search — he was tied up; but he did come in time for the second half of the search.

Q. And did you immediately execute the search warrant upon having it read to Mr. Andresen? A. No, there was a short delay. Mr. Andresen first of all said — he insisted on contacting his attorney and was not able to reach Mr. Lamb. He demanded that we wait until he was able to reach Mr. Lamb. The policeman who was in charge of executing the warrant formally read it to him and so on and said — we waited for him to call and he wasn't able to reach him and didn't know when he would be able to reach him, so we said we would have to proceed with the search.

* * * * * *

[176] Q. So of the documents you seized, what percentage of all books, records, documents and papers in the entire office did you seize? I understand it's an

estimate. A. A very small percentage. I would say at the most, two or three per cent.

* * * * * *

[278] AGENT LAWRENCE,

thereupon was recalled by the prosecution, resumed the witness stand, was reminded that he was still under oath and testified as follows:

DIRECT EXAMINATION

By Mr. Werner:

Q. Mr. Lawrence, did you have occasion to participate in the execution of the search warrant of the premises, 3700 Decatur Avenue, the law offices of Peter C. Andresen, on or about the 30th of October, 1972? A. I did.

Q. In your company was there a Mrs. Deborah Nalls as part of the search party? A. She was.

* * * * * *

[355] (The Court) What about the Fifth Amendment aspect of it?

(Mr. Werner) Okay, in order for there to be a Fifth Amendment protection in personal papers, and I stress the word "personal" — A, there must be — they have to be personal communications and not business records. We set forth in our memorandum those cases which support that. There is a case about gambling records and a case about a personal diary where the court held that these were not personal records, these were business records and documents. Mr. Andresen was engaged in the profession of law; these were settlement documents and papers, they were described as such; Your Honor has seen them; [356] they are such. Law is a business in its general sense and these are most certainly business documents. . . . The cases talk about the real evil that the amendment is intended to guard against, and that is the rummaging search, but there is a quotation somewhere in there which indicates that it would almost be folly to conclude that if a man were to reduce his thoughts to paper, he could avoid almost any crime that might be proven through those documents,

and that is why the business records exception, or the records being business and not personal are excepted from the Fifth Amendment.

Now, that is the "A" part of it, and he does not meet the "A" part of it, business records — it is business records and not personal records. . . .

TABLE OF EXHIBITS

Exhibit No.	*No. on Return All Part of #51*	*In Evidence and Explanation of Exhibit*
10*		
11		R. 63
12		R. 103-121
13		
14		
15	1	R. 147
16	4	R. 147-148
17	6	R. 148
18	7	R. 149
19	8	R. 149-150
20	9	R. 150-151
21	10	R. 151
23	13	R. 152
24	14	R. 152-154
28	18	R. 158-160
29	19	R. 161
30	20	R. 161
31	22	R. 162
32	23	R. 162
33	25	R. 162
34	27	R. 162

* Exhibits 10 to 14, inclusive, refer to the returns for 3514 Plyers Mill Road. The remaining exhibits refer to the return for 3700 Decatur Avenue. The returns are filed at A. 122 and A. 119 respectively.